



ADMINISTRATIVE LAW

SUPPLEMENTAL MATERIALS

VOLUME II

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and

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Faculty of Law

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FACULTY OF LAW
UNIVERSITY OF TORONTO

ADMINISTRATIVE LAW SPRING SEMESTER 2006

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Class Meetings: **Mondays and Wednesdays, 9:00am-10:45am**

Overview

This course is an introductory course examining administrative law - which covers the legal regulation and judicial supervision over the executive branch of government. The courts have developed a distinctive jurisprudence governing the manner in which government officials carry out their statutory mandates and exercise discretion under those statutes. This body of law is of general application to the judicial review of the actions of government officials and thus is relevant and important to many other substantive areas of law, including labour law, immigration law, constitutional law, environmental law, banking and securities law and many others.

Texts

The text required for this course is D. Mullan, *Administrative Law: Cases, Text and Materials* (5th Ed.) (Toronto: Emond Montgomery, 2003) and Green & Sossin, *Administrative Law, Spring 2006 Supplemental Materials*.

Recommended Reading

For those seeking additional readings, the following sources are recommended:

- Brown and Evans, *Judicial Review of Administrative Action* (Brown & Evans, 1998) (Canada) (Looseleaf ed.)
- D. Mullan, *Administrative Law* (Toronto: Irwin, 2001)
- MacCaulay & Sprague, *Practice and Procedure before Tribunals* (Toronto: Carswell, 1988) (Looseleaf ed.)

- Blake, *Administrative Law in Canada*, (3rd ed. Butterworths, 2001) (Canada)
- Bryant & Sossin, *Public Law* (Toronto: Carswell, 2002)
- Davis & Pierce, *Administrative Law Treatise* (3rd ed. Little Brown 1994) (U.S.)

Evaluation

There will be a final, open-book examination of 3 hours duration. Students may also elect to write a paper on a topic submitted to and approved by us before the end of the first week of March 2006. This will be an *additional* form of evaluation and will constitute 50% of a student's grade - the other 50% of the grade will be based on the grade in the final examination. Papers should be 18-20 double-spaced pages. This is a "no-downside" option, so that if a student receives a grade on the paper less than that student receives on the exam, it will not count towards the student's final grade. Similarly, students may also elect to undertake a practicum with Downtown Legal Services (DLS) in which they take on at least 2 files involving cases before administrative tribunals supervised by a DLS lawyer and write up a short paper (10 double-spaced pages) on the insights this experience shed on the issues covered in the class. This is also a "no-downside" option and an *additional* form of evaluation to the exam and also will be worth 50% of a student's grade.

Course Outline

All page references are to D. Mullan, *Administrative Law: Cases, Text and Materials* (5th) (AL) or to the 2006 Supplemental Materials (SP).

Part I: Introduction

This will offer an introduction to the functions and institutions of government in Canada, and emphasize the constitutional, statutory and common law separation of powers between the judicial, legislative and executive branch. With respect to the executive branch, we will explore the growth of administrative agencies, boards, commissions, tribunals and other government decision-makers that make up the administrative state.

Reading:

"The Administrative State and the Rule of Law", AL pp. 3-35; *Baker v. Canada (Minister of Citizenship & Immigration)* AL p. 57-87.

Part II: Administrative Procedures and the Duty of Fairness

(i) Introduction

The purpose and legal sources of administrative procedures; historical overview; the roles of legislatures, agencies and courts in designing procedures.

Reading:

(ii) Duty of Fairness

- (a) historical overview
Reading: AL pp. 99-103; Cooper v. Board of Works for Wandsworth District, AL pp. 104-6.
- (b) the emergence and elaboration of the duty of fairness: *Nicholson & Knight*
Reading: Mullan, Administrative Law (2001), SP1 p. 1; Nicholson, AL pp. 107-16; Knight, AL pp. 116-31.
- (c) limitations on the scope of the duty: legislative and policy decisions
Reading: Inuit Tapirisat, AL pp. 132-40; Homex Realty, AL pp. 140-44; Authorson v. Canada, SP1 p. 9; Wells v. Newfoundland, SP1 p. 21-26, 33-34; D. Mullan, "The Role of the Judiciary in the Review of Administrative Policy Decisions: Issues of Legality", SP1 p. 36; East York v. Ontario, SP1 p. 54.
- (d) interests protected by the duty of fairness
Reading: Re Webb and Ontario Housing Corporation, AL pp. 152-7; Hutfield v. Board of Fort Saskatchewan General Hospital, District No. 98, AL pp. 158-63.
- (e) administrative action that is non-final: recommendations and decisions to prosecute
AL pp. 164-6; Re Abel and Advisory Review Board, AL pp. 168-72.
- (f) legitimate expectations
Reading: Mullan, Administrative Law (2001), SP1 p. 59; Baker, p. 68; CUPE v. Ontario (MOL) SP1 pp. 81-93, 98-101.

(iii) Constitutional Thresholds: Section 2(e) of the *Bill of Rights* & Section 7 of the *Charter*

- (a) *Reading: Mullan, Administrative Law (2001), SP1 p. 113; Singh v. Canada (Minister of Employment and Immigration), AL p. 215-219; Blencoe v. B.C. (Human Rights Commission), AL p. 246-57.*

(iv) The Content of Procedural Fairness

- (a) introduction and analytical framework
Reading: Mullan, Administrative Law (2001), SP1 p. 127; Baker v. Canada (Minister of Citizenship & Immigration), AL p. 57-72; Suresh v. Canada (Minister of Citizenship & Immigration), AL p. 298-301; Ahani v. Canada (Minister of Citizenship & Immigration) SP1 p. 130.

- (b) *Statutory Powers Procedure Act* and other general procedural codes
Reading: Mullan, *Administrative Law* (2001), SP1 p. 137; *Amended SPPA*, SP1 p. 143.
- (c) delay
Blencoe v. B.C. (Human Rights Commission) AL pp. 246, 257-75.
- (d) oral hearings
Reading: Mullan, *Administrative Law* (2001), SP1 p. 168; *Khan v. University of Ottawa*, AL p. 372.
- (e) the right to counsel
Reading: Mullan, *Administrative Law* (2001), SP1 p. 178; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, SP1 p. 180.
- (f) disclosure
Reading: Mullan, *Administrative Law* (2001), SP1 p. 212; *Pritchard v. Ontario (Human Rights Commission)*, SP1 p. 216; *Haghighi v. Canada (Minister of Citizenship and Immigration)*, SP1 p. 225.
- (g) evidence and cross-examination
Reading: Mullan, *Administrative Law* (2001), SP1 p. 238.
- (h) the duty to provide reasons for decisions
Reading: Mullan, *Administrative Law* (2001), SP1 p. 241; *Baker* AL, pp. 70-72; *Liang v. Canada (Minister of Citizenship & Immigration)*, SP1 p. 248; *Gray v. Ontario (DSP)*, SP1 p. 255; *R. v. Sheppard*, SP1 p. 272.
- (i) the relevance of international human rights norms and procedural requirements
Reading: *Baker* AL, pp. 79-80; *Ahani v. Canada (OCA)*, SP1 p. 275;

(v) Bias & Independence

- (a) impartiality and independence
Reading: Mullan, *Administrative Law* (2001), SP1 p. 309; 2747-3174 *Quebec Inc. v. Quebec (Régie des permis d'alcool)*, AL p. 612-18; *Ellis Don v. Ontario (Labour Relations Board)*, AL p. 539; *Newfoundland Telephone Comp. v. Newfoundland (Board of Utility Commissioners)*, AL p. 642 ; *Imperial Oil v. Quebec (Minister of the Environment)*, SP1 p. 324; *Bell v. Canadian Telephone Employees Association*, SP1 p. 341; *Canadian Pacific Ltd. v. Matsqui*, AL p. 662; *Ocean Port v. B.C.*, SP1 p. 355; *Gale v. Miracle Food Mart*, SP1 p. 367; M. Jimenez, "Refugee Approval Rates Vary Widely" SP1 p. 374; L. Sossin, "From

Neutrality to Compassion: The Place of Civil Service Values and Legal Norms in the Exercise of Administrative Discretion” SP1 p. 377.

Part III: Standard of Review

(i) Introduction

Reading: AL pp. 697-700, 700-707, 714-723; *Law Society of New Brunswick v Ryan*, SP2 p. 1-14 ; *CUPE v. City of Toronto* (Lebel J. concurring), SP2 p. 15-38

(ii) The Pragmatic and Functional Approach

Introduction

Reading: *Dr. Q. v College of Physicians and Surgeons of BC*, SP2 p. 39-49.

- (a) the standard of patent unreasonableness
Reading: *National Corngrowers v. Canada*; *CUPE, Local 301 v. City of Montreal*, *Domtar v. Quebec*, *City of Toronto v. OSSTF*, AL pp. 867-914
- (b) the standard of review: correctness
Reading: *Canada v. Mossop*, AL pp. 825-841, *Pushpanathan v. Canada (Min. Of Citizenship & Immigration)*, SP2 pp. 50-76, *Trinity Western College v. B.C. College of Teachers*, AL pp. 801-812.
- (c) the standard of reasonableness *simpliciter*
Reading:, *Canada (Dir. of Investigation and Research) v. Southam Inc.*, AL pp. 860-867, *Barrie v. CTEA*, SP2 pp. 95-98, 109-125; *Chamberlain v. Surrey School District No. 36*, SP2 p. 126152.
- (d) the *ultra vires* principle
Reading: *Sheehan v. Criminal Injuries Compensation Board*, AL pp. 960-968, *Shell v. Vancouver (City)*, AL pp. 968-982, *Baker*, AL pp. 74-83 *Nanaimo (City) v Rascal Trucking Ltd.*, AL p. 841, *CUPE v. (Ontario) MOL*, SP1 pp.72-76, 90-93
- (e) The new statutory approach
Reading: *BC Administrative Tribunals Act, 2004*, SP2 pp. 153-177.

Part IV: Rulemaking and Regulatory Dilemmas

- (a) regulations
Reading: *Thorne's Hardware v. Canada*, AL pp. 1009-1010; M. Taggart. “From

‘Parliamentary Power’ to Privatization: The Chequered History of Delegated Legislation in the Twentieth Century” SP2 p. 178; *Enbridge v. Ontario Energy Board*, SP2 p. 196; Environmental Commissioner of Ontario, 2004 – 2005 Annual Report, SP2 p. 217

Recommended

Janisch, “Further Developments with respect to Rulemaking by Administrative Agencies”, SP2 p. 225.

- (b) soft law
Reading: AL, 675-696, Mullan, “Administrative Law”, SP2 p. 234238; L. Sossin, “The Rule of Policy: Baker and the Impact of Judicial Review of Administrative Discretion” SP2 pp. 239-252

Recommended

L. Sossin, “Discretion Unbound: Reconciling Soft Law and the *Charter*” SP2 p. 253-290; S. Choudhry & K. Roach, “Racial and Ethnic Profiling: Statutory Discretion, Constitutional Remedies and Democratic Accountability” SP2 pp. 291-305.

Part V: Jurisdiction, Justiciability and Standing

- (a) a tribunal’s authority to decide constitutional questions
Reading: *Cooper v. Canada (Human Rights Commission)*, *Weber v. Ontario Hydro* AL pp. 915-946; In *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General) (“Morin”)*, SP2 pp. 306-309; *Quebec (Attorney General) v. Quebec (Human Rights Tribunal) (“Charette”)* SP2 pp. 310-312; *Canada (House of Commons) v. Vaid*, SP2 pp. 313-316; *Paul v. B.C (Forest Appeals Commission)* SP2 p. 317-319; *Nova Scotia (Worker’s Compensation Board) v. Martin*, SP2 pp. 320-356.
- (b) standing
Reading: AL pp. 1189-1225, *Harris v. Canada*, AL p. 1220; *Ontario (Children’s Lawyer) v. Ontario (Information and Privacy Commissioner)* SP2 p. 357-386.
- (c) justiciability
Reading: L. Sossin, *The Law of Justiciability in Canada* (Carswell, 1999), SP2 p. 387-400.
- (d) doctrine of exhaustion and collateral attacks
Reading: AL pp. 465-70; *R. v. Consolidated Maybrun Mines Ltd.*, AL pp. 1303-

1309; *Danyluk v. Ainsworth Technologies Inc.* SP2 p. 401-422.

Part VI: New Approaches, New Frontiers of Administrative Law

Recommended

Mullan and Ceddia, “Globalization, Democracy and Domestic Law: The Impact on Public Law of Privatization, Outsourcing and Downsizing – A Canadian Perspective, SP2 p. 423.

Sossin, “Boldly Going Where No Law Has Gone Before: Call Centres, Intake Scripts, Database Fields and Discretionary Justice in Social Welfare”, SP2 p. 443.

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